NO. 14-8021

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

EXXON MOBIL CORPORATION, EXXONMOBIL PIPELINE COMPANY, and MOBIL PIPE LINE COMPANY,
Petitioners

v.

RUDY F. WEBB, BETTY WEBB, ARNEZ HARPER, and CHARLETHA HARPER, on behalf of themselves and all others similarly situated,
Respondents

RESPONDENTS' ANSWER IN OPPOSITION TO JOINT PETITION TO APPEAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 23(f)

From a Class Certification Order by the
United States District Court for the Eastern District of Arkansas

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BACKGROUND

At its core, this case involves the straightforward application of Rule 23 to rather routine – albeit high profile – facts giving rise to claims for equitable relief under state common law of contracts and property. To be more specific, in the 1940s the predecessor in interest[1] to Petitioners Exxon Mobil Corporation, ExxonMobil Pipeline Company, and Mobil Pipe Line Company (collectively, "Exxon" or the "Company") negotiated with landowners in Arkansas, Texas, Missouri, and Illinois for the purpose of obtaining easements permitting the installation and operation of a pipeline across their property. (Am. Compl. ¶¶ 22-24, ECF No. 23.)[2] These contractual easements, which are substantively identical, require Exxon to "maintain," "repair," and (if necessary) "remove" or "replace" the pipeline. (*Id.* ¶ 22; *see also, e.g.*, Right of Way Grant by O.L. & Nora Irby ("Irby Easement"), ECF No. 26-1.) Although Exxon voluntarily assumed these commitments via the contractual

[1] For ease of discussion, this Answer in Opposition refers to the owner at any given time of the easements in question as "Exxon."

[2] When relying on a record entry as an authority for a proposition, this Answer in Opposition identifies the paper by name, and following a pinpoint citation (if warranted) provides the numerical designation assigned to the document by the district court's Electronic Case Filing ("ECF") system.

easements, parallel obligations also exist as a matter of fundamental property law. *See* 25 Am. Jur. 2d *Easements and Licenses* § 72 (2014) ("[T]he owner of an easement must keep it in repair.").

Exxon has breached its promises to property owners and has fallen well short of its common law duties. Exxon did not properly "maintain" or "repair" the pipeline, even though it was forged from antiquated processes with a well-known susceptibility to failure. (*See, e.g.*, Fact Sheet: Material Weld Failures 3, ECF No. 53-7.) Instead, the Company forced the line into service decades beyond its recognized life expectancy (*see* J.E. McGreath, Certified Trial Testimony, ECF No. 53-9 (observing that the "normal life" of the pipe when crafted in 1947 was "[a]bout thirty years")), most recently ramping up pressure on the pipe by reversing its flow and causing it to transport Canadian Tar Sands, a substance more like a solid than the liquid petroleum the structure was designed to accommodate. (*See* Am. Compl. ¶ 30, ECF No. 23; Expert Report of R. Don Deaver 19-22, 26, 28, ECF No. 54-2; Boyd Easement, ECF No. 23-4 (granting easement for pipe to convey "fluid substance").)

Predictably, Exxon's disregard of its contractual and property law responsibilities has led to failures up and down the line (*E.g.*, Am.

Compl. ¶ 29, ECF No. 23 (describing several leakage events since 1987)), culminating on March 29, 2013 with a major rupture in Mayflower, Arkansas that released tens of thousands of gallons of Tar Sands into the Mayflower community (*id.* ¶ 33, at 13-14). Constantly apprehensive that they might be the next victims of this sort of calamity, and no longer willing to countenance Exxon's indifference to its contractual vows, Arnez and Charletha Harper (the "Landowners") – owners of property subject to the underlying easements – filed this suit on behalf of other landowners burdened by the pipeline, seeking to ensure that Exxon finally lives up to its promises to "repair," "maintain," or (if necessary) "remove" or "replace" the pipeline. By the time of class certification, the Harpers had clarified that they desire only equitable relief in this action, including either (1) rescission of the contractual easements and removal of the pipeline from their property; or (2) specific performance of the easement contract, requiring Exxon to replace the pipeline.

PROCEDURAL HISTORY

The Landowners filed this lawsuit on April 17, 2013, and Exxon promptly moved to dismiss their claims. Exxon's primary basis for

dismissal was its belief that the Pipeline Safety Act, 49 U.S.C. §§ 60121-60140 (the "PSA"), preempts the Landowners' cause of action grounded on state contract and property law. (Br. Supp. Exxon's Second Mot. Dismiss 1, 4-7, ECF No. 27 (submitted as Exhibit 1 to this Answer in Opposition).) The district court denied the Motion to Dismiss (Order of Oct. 31, 2013, ECF No. 43), and the Landowners subsequently moved for class certification (Pls.' Mot. Class Certification, ECF No. 53).

As its principal objection to class certification, Exxon recycled the same preemption arguments that were denied by the Court at the dismissal stage. (Defs.' Resp. Mot. Class Certification 1, 8-13, ECF No. 61 (submitted as Exhibit 2 to this Answer in Opposition).) Exxon freely admitted as much, but "request[ed] that the [district] [c]ourt *reconsider* [its] ruling" on the Motion to Dismiss. (*Id.* at 9 n.2 (emphasis added).) The district court again rejected this position when it granted class certification, emphasizing that the Landowners simply seek to enforce their easement contracts via common law breach of contract claims and they "make no reference to any state law standards regarding safety that would raise questions of preemption." (Order of Aug. 12, 2014, at 5, ECF No. 67.)

In its August 12 Order, the district court named the Landowners as representatives of a class consisting of "[a]ll persons and entities who currently own real property subject to an easement for the Pegasus Pipeline and who have pipeline physically crossing their property, from Patoka, Illinois to Corsicana, Texas." (Order of Aug. 12, 2014, at 11-12, ECF No. 67.) This is a readily identifiable class of property owners who have all been affected in the same way by Exxon's refusal to abide by its repeated contractual undertaking to properly "maintain," "repair," or (if necessary) "remove" or "replace" its pipeline, making this a class action "present[ing] familiar and almost routine issues that are no more worthy of immediate appeal than many other interlocutory rulings." Fed. R. Civ. P. 23(f) advisory committee's note (1998 Amendments). Exxon desires to appeal the class action order nonetheless, insisting that the possibility of federal preemption justifies interlocutory review. Rule 23(f), however, envisions that an appeal may sometimes – though infrequently – lie to take up "novel" issues on which a "certification decision turns," Fed. R. Civ. P. 23(f) advisory committee's note (1998 Amendments), which is a far cry from an appeal centered upon a refusal to reconsider grounds offered in support of a motion to dismiss (*see*

Defs.' Resp. Mot. Class Certification (Ex. 2) 9 n.2 (asking district court to "reconsider" rejection of preemption arguments)).[3]

For this and other reasons detailed in this Answer in Opposition, Exxon's Rule 23(f) Petition should be denied.

LEGAL STANDARD

Rule 23(f) of the Federal Rules of Civil Procedure empowers a circuit court to "permit an appeal from an order granting or denying class-action certification." Fed. R. Civ. P. 23(f). An appellate court's exercise of discretion under the rule is "unfettered," Fed. R. Civ. P. 23(f) advisory committee's note (1998 Amendments), but the scope of any

[3] Exxon has again urged the district court to reconsider its preemption analysis, though this time by way of a motion properly characterized as such. (*See* Mot. Recons. ¶ 5, ECF No. 69 ("Upon reconsideration, the [c]ourt should dismiss plaintiffs' claims as preempted and decertify the class.").) By filing its Motion for Reconsideration simultaneously with the present Petition, Exxon has invited considerable judicial inefficiency. Indeed, an uncontradicted wealth of authority reveals that the deadline for seeking interlocutory review under Rule 23(f) would have awaited resolution of the Motion for Reconsideration. *See Gutierrez v. Johnson & Johnson*, 523 F.3d 187, 193 n.4 (3d Cir. 2008) ("[T]he running of the . . . period [to file a Rule 23(f) Petition] is 'postponed' until the district court rules on the motion [to reconsider]."); *Jenkins v. BellSouth Corp.*, 491 F.3d 1288, 1290 (11th Cir. 2007) (same); *Carpenter v. Boeing Co.*, 456 F.3d 1183, 1191 (10th Cir. 2006) (same); *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 837 (7th Cir. 1999) (same). Rather than follow that route, Exxon has petitioned this appellate tribunal to take action that would moot the relief it is earnestly seeking in the district court, and vice versa.

authorized appeal is limited: "[U]nder Rule 23(f), a party may appeal *only* the issue of class certification; *no other issues may be raised*," *Bertulli v. Indep. Ass'n of Cont'l Pilots*, 242 F.3d 290, 294 (5th Cir. 2001) (emphases added). Moreover, because "interlocutory appeals are inherently disruptive, time-consuming, and expensive," *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1276 (11th Cir. 2000), *cited with approval in Elizabeth M. v. Montenez*, 458 F.3d 779, 783 (8th Cir. 2006), the review afforded by Rule 23(f) "should be the exception, not the rule," *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 294 (1st Cir. 2000), *cited with approval in P.A.C.E. v. Sch. Dist. of Kan. City*, 312 F.3d 341, 343 (8th Cir. 2002).

All in all, as demonstrated throughout this Answer in Opposition, nothing about this litigation recommends it as "among the *rare instances* in which interlocutory review of a certification decision is warranted." *In re Rail Freight Fuel Surcharge Antitrust Litig. – MDL No. 1869*, 725 F.3d 244, 247 (D.C. Cir. 2013) (emphasis added).

ARGUMENT

Exxon's various filings leave no doubt that the Petition to Appeal is almost entirely a product of the district court's refusal to dismiss the

case on preemption grounds. (*See, e.g.*, Mot. Recons. ¶ 5, ECF No. 69 (exhorting district court to reconsider its class certification order so as to "*dismiss plaintiffs' claims as preempted*" (emphasis added)).) Much as Exxon protests otherwise, this argument for dismissal is completely unrelated to class certification and beyond the purview of Rule 23(f). In addition, the PSA does not, in fact, preempt the Landowners' common law claims. Consequently, and given that the district court's actual application of Rule 23 to a plainly ascertainable group of similarly situated Class Members was nothing more than an ordinary application of Rule 23 criteria, Exxon has failed to establish that the facts at bar justify an interlocutory appeal.

I. The District Court's Refusal To Dismiss The Landowners' Claims As Preempted Provides No Cause For An Appeal Under Rule 23(f)

A. Rule 23(f) Does Not Allow A Preemption Appeal

By its own terms, Rule 23(f) is expressly restricted to appeals from orders "granting or denying class-action certification." Fed. R. Civ. P. 23(f). Federal appellate courts have faithfully honored this language, recognizing that the rule does not extend to "any other type of order, even where that order has some impact on another portion of Rule 23." *McKowan Lowe & Co. v. Jasmine, Ltd.*, 295 F.3d 380, 390 (3d Cir.

2002); *see also Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1264 n.5 (11th Cir. 2009) ("[O]ur jurisdiction is limited to review of the district court's class certification decision . . . ."); *Bertulli*, 242 F.3d at 294 ("[U]nder Rule 23(f), a party may appeal only the issue of class certification; no other issues may be raised."). Exxon attempts to broaden this narrow focus by suggesting the rule's drafters anticipated that the likelihood of an appeal would increase "when the *certification decision turns* on a novel or unsettled question of law," Fed. R. Civ. P. 23(f) advisory committee's note (1998 Amendments) (emphasis added), but these words offer the Company no solace. Even assuming the argument of the PSA's preemption was "novel" or "unsettled," though it is neither, this is not a consideration on which the "*certification decision turn[ed]*." Fed. R. Civ. P. 23(f) advisory committee's note.

Of course, "federal courts are courts of limited . . . jurisdiction," *Thomas v. Basham*, 931 F.2d 521, 522 (8th Cir. 1991), and this Court has stressed that it will *always* "consider [a] jurisdictional issue sua sponte," *Bilello v. Kum & Go, LLC*, 374 F.3d 656, 659 (8th Cir. 2004). It is for this reason that Exxon has been able to locate a single case in which this Court addressed the *jurisdictional* issue of *standing* on a

23(f) appeal,[4] for standing is a threshold "jurisdictional question." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 86 (1998). Succinctly stated, "[o]ne exception to the rule [that Rule 23(f) is limited to class certification issues] relates to jurisdictional issues. Courts are *always* required to examine their own jurisdiction." David F. Herr, *Annotated Manual for Complex Litigation* § 15.12 Author's Comments (4th ed. 2014). As such, it was necessary for this Court to examine standing in *Cox*, for the very capacity to hear the case depended on the answer to the question. It is completely different with the doctrine of preemption, as this Court will possess jurisdiction regardless of the result. If there is no preemption, the lawsuit will proceed. If preemption does apply, the federal courts will have jurisdiction to declare the landowners' claims preempted.

Unlike standing, this Court's jurisdiction does not depend on the outcome of the preemption question. The denial of Exxon's Motion to

[4] To be clear, this Court in *Zurn* described the plaintiffs' claims as "cognizable" after addressing the jurisdictional question of standing. *Cox v. Zurn Pex, Inc.*, 644 F.3d 604, 616-17 (8th Cir. 2011). The other cases cited by Exxon on this point have no pertinence to the 23(f) Petition. *See Johnson v. West Publ'g Corp.*, 504 F. App'x 531, 532-36 (8th Cir. 2013) (reviewing order on Rule 12(c) motion during interlocutory appeal authorized under 28 U.S.C. § 1292(b)); *Elizabeth M.*, 458 F.3d at 782-88 (involving completely distinct issues).

Dismiss turned on the issue of preemption; the Motion for Class Certification did not. Additionally, the preemptive effect of the PSA has no bearing on this Court's jurisdiction. The subject of preemption is outside the ambit of Rule 23(f).

B. The PSA Does Not Preempt The Landowners' State Common Law Claims

Exxon maintains that the PSA preempts the Landowners' claims founded on state common law. That is incorrect. It is well settled that the "purpose of Congress is the ultimate touchstone of pre-emption analysis." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992). In that regard, "the best indication of Congress' intentions, as usual, is the text of the statute itself." *S. Port Marine, LLC v. Gulf Oil Ltd. P'ship*, 234 F.3d 58, 65 (1st Cir. 2000). Although courts have interpreted the "text of" the PSA to "preempt[] state laws *regarding pipeline safety*," *Am. Energy Corp. v. Tex. E. Transmission, LP*, 701 F. Supp. 2d 921, 929 (S.D. Ohio 2010) (emphasis added), those same tribunals have determined that "neither the PSA, nor the [Natural Gas Act], prevents claims based on state contract, tort, or property law," *id.* at 931. That much is evident from the plain language of the PSA, which is "silent as

to rights-of-way and easements." *Columbia Gas Transmission Corp. v. Drain*, 191 F.3d 552, 555 (4th Cir. 1999).

Though the terms of the PSA have nothing to say about easements, they more generally provide that "[a] State authority may not adopt or continue in force *safety standards* for . . . pipeline facilities." 49 U.S.C. § 60104(c) (emphasis added). Alongside this rather feeble preemption statement, the law simultaneously ensures that it does "not affect the tort liability of any person," *id.* § 60120(c), while confirming that any "right to relief that a person *or a class of persons* may have under another law *or at common law*" remains intact, *id.* at § 60121(d) (emphasis added). Understandably, courts have harmonized these preemption and savings clauses to conclude that the PSA does not preempt state "contract, tort, or property law," inasmuch as the statute contains "no explicit preemption language . . . or any evidence of inferences of preemption." *Abramson v. Fla. Gas Transmission Co.*, 909 F. Supp. 410, 416 (E.D. La. 1995); *see also Am. Energy Corp.*, 701 F. Supp. 2d at 931 ("The PSA does not preempt [state] property or tort law.").

Exxon seeks to extend the preemptive reach of the PSA far beyond what is authorized by the statute's terms, and the Company does so on the strength of cases interpreting other laws evidencing that Congress, in those instances, meant to cast a wide net of preemption. That Congress has the ability to displace common law, if it so desires, and has sometimes chosen to nullify state common laws, lends no support to Exxon here, where Congress expressly stated in the PSA that the law does "not affect the tort liability of any person" and does not alter the "right to relief that a person or a class of persons may have under another law or at common law." 49 U.S.C. § 60120(c). [5]

This Court has previously observed that the PSA precludes "states from *regulating* in the *area of safety* in connection with interstate hazardous liquid pipelines." *Kinley Corp v. Iowa Utils. Bd.*, 999 F.2d

[5] Thus, this Court's opinion in *Nat'l Bank of Commerce v. Dow Chem. Co.*, 165 F.3d 602 (8th Cir. 1999), upon which Exxon relies, does not support Exxon's argument. In particular, that case dealt with the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), a law with a broad preemptive shadow evidencing Congressional intent to create a "comprehensive scheme" encompassing state common law. *Id.* at 607-09. Exactly the opposite is true for the PSA, with its explicit instruction that it does not affect a "right to relief that a person or a class of persons may have under another law or at common law." 49 U.S.C. § 60121(d); *see also Cipollone*, 505 U.S. at 516 (identifying the "purpose of Congress [a]s the ultimate touchstone of pre-emption analysis").

354, 358 (8th Cir. 1993) (emphases added); *see also Wash. Gas Light Co. v. Prince George's Cnty. Council sitting as Dist. Council*, 711 F.3d 412, 420 (4th Cir. 2013) ("[T]he PSA expressly preempts state and local law *in the field of safety*." (emphasis added)). At the same time, the "PSA does not preempt [state] property or tort law." *Am. Energy Corp.*, 701 F. Supp. 2d at 931; *see also Abramson*, 909 F. Supp. at 416 (reasoning that the PSA does not preempt state "contract, tort, or property law"); *cf. Bldg. & Constr. Trades Council of the Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 221 (1993) ("[P]re-emption doctrines apply only to state *regulation*." (emphasis in original)).

To summarize, the PSA does not undo the state law contract and property claims brought by Class Members. In order to obtain the easements, Exxon voluntarily undertook to "repair" and "maintain" its pipeline. The Landowners are simply attempting to enforce this obligation. The PSA does not obstruct the Landowners' ability to do so, just as it is unconcerned with the operation of general property laws. Importantly, PSA preemption is not a "novel" or "unsettled" issue, furnishing yet another reason to deny Exxon's Petition.

II. The District Court Properly Certified A Class Of Landowners Burdened By The Pipeline

Once attention is directed to the topic of class certification, as required by Rule 23(f), it is apparent that the district court's action was anything but extraordinary. Because the interpretation and implementation of Rule 23 standards here was "familiar" and "routine," the circumstances do not merit an immediate appeal under Rule 23(f).

A. The Class Is Easily Identifiable

The real estate records of the four states in question will reveal the owners of property subject to Exxon's easements. Further, the Company is required by federal law to maintain a compilation of those in the public affected by its pipeline. *See* 49 C.F.R. §§ 192.616, 195.440 (2013); American Petroleum Institute, Recommended Practice No. 1162. To be sure, Exxon has touted its ability to "notify all affected public . . . within 75' feet [sic] of the pipeline." *See* ExxonMobil Pipeline Company, *Pegasus Integrity Testing Plan* 4 (Mar. 28, 2014), *available at* http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_1CD3A957F1C04F27CA25A8D14F67DF1BBB141300/filename/ExxonMobil_North_Pegasus_Remedial_Work_Plan_03282014.pdf. The District Court certified a class of persons whose property is subject to the easement and is

crossed by a pipeline. These are wholly objective criteria, making it easy for a person to determine membership in the Class. *See, e.g., Carrera v. Bayer Corp.*, 727 F.3d 300, 307 (3d Cir. 2013).

Without belaboring the obvious, suffice it to say that Landowners, Exxon, and the district court may with little difficulty identify Class Members.

B. Questions Of Law And Fact Are Common To The Class

The threshold to meet the requirement of commonality is not high. *See Jenkins v. Raymark Indus.*, 782 F.2d 468, 472 (5th Cir. 1986). Indeed, if a claim "arises out of the same legal or remedial theory, the presence of factual variations is normally not sufficient to preclude class action treatment." *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 831 (8th Cir. 1977). Common questions exist when there is "a common nucleus of operative fact" despite the existence of some individual issues among class members. *Coley v. Clinton*, 635 F.2d 1364, 1379 (8th Cir. 1977).

As part of its rigorous analysis, the district court referenced "several" common questions implicated by this litigation, particularly "whether Exxon has failed to properly operate and maintain the pipeline, and whether such failure constitutes breach of the[] easement

contracts." (Order of Aug. 12, 2014, at 7, ECF No. 67.) The district court was correct to conclude that "these questions are central to the validity of all class members' claims" (*id.*), such that their "'truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke,'" *Bennett v. Nucor Corp.*, 656 F.3d 802, 814 (8th Cir. 2011) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)). Whether, through the failure to maintain its dilapidated pipeline, Exxon breached its obligations to those with whom it stands in privity poses a much different question than whether all of a mammoth retailer's minority employees nationwide suffered discrimination. *Cf. Wal-Mart*, 131 S. Ct. at 2550-52. In this instance, unlike *Wal Mart*, the "common contention[s]" are "capable of classwide resolution," *Id.* at 2551, and Landowners have therefore satisfied the requirements of Rule 23(a)(2).

C. The Common Questions Predominate

The predominance inquiry of Rule 23(b)(3) examines "whether proposed classes are sufficiently cohesive to warrant adjudication by misrepresentation." *Amchem Prods. v. Windsor*, 521 U.S. 591, 622 (1997). Relying on similar cases from within this circuit that have

certified classes of "several thousand" easement holders, the district court correctly answered this query in the affirmative. (Order of Aug. 12, 2014, at 10-11, ECF No. 67 (citing *Barfield v. Sho-Me Power Elec. Coop.*, Case No. 11-cv-04321-NKL, 2013 WL 3872181, at *1 (W.D. Mo. July 25, 2013)).) As accurately observed by the district court, in this case "the proposed class members all are subject to Exxon's easement, and their claims depend on the rights as specified in their easement contract." (*Id.* at 11.) That being so, "common issues predominate; all issues arise out of the plaintiffs' easements and concern common questions of Exxon's operation and maintenance of the pipeline." (*Id.*)

Exxon criticizes this sensible outcome by mentioning affirmative defenses it may raise, but it is widely accepted that "the presence of affirmative defenses against various class members . . . will not usually bar a finding of predominance of common issues." 2 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 4:26, at 243-44 (4th ed. 2002); *see also* 7AA Charles Alan Wright et al., *Federal Practice and Procedure* § 1778 n.14, at 124 (3d ed. 2005) ("Courts are reluctant to deny class-action[s] because [of] affirmative defenses."). The district court correctly determined the Landowners have established that

common questions predominate over individual issues. (*See* Order of Aug. 12, 2014, at 10-11, ECF No. 67.)

D. Conclusion

Exxon attempts to use this proceeding to attack the merits of a run-of-the-mill application of Rule 23, but that is not what Rule 23(f) is about at all. Even so, the district court's decision to grant class certification is sound, and it is most certainly not "manifestly erroneous." Fed. R. Civ. P. 23(f) advisory committee's note (1998 Amendments). Exxon's Petition should be denied.

III. This Is Not A "Death-Knell" Situation For Exxon

As a last gasp, Exxon goes so far as to liken the approval of class action status here to those cases in which a defendant is forced to settle "rather than incur the costs of defending a class action and run the risk of potentially ruinous liability." Fed. R. Civ. P. 23(f) advisory committee's note (1998 Amendments). That observation has no relevance here. To begin with, the Landowners seek only equitable relief ((1) rescission of the easement and removal of the pipe; and/or (2) specific performance requiring Exxon to replace the outdated and dilapidated pipeline), meaning that there is no possibility of "ruinous

liability." *Cf. Prado-Steiman ex rel. Prado*, 221 F.3d at 1274 ("[E]ven a large class *seeking declaratory or injunctive relief* may create less pressure on a defendant than a class seeking compensatory and punitive damages . . . ." (emphasis added)). What is more, Exxon is the richest company in the world, literally, and it is preposterous to propose that the certification of this class may compel it to settle. *See In re Rail Freight*, 725 F.3d at 251 (observing that "death-knell cases are uncommon" after reflecting that "what might be 'ruinous' to a company of modest size might be merely unpleasant to a behemoth.").

In actuality, it would seem that Exxon would welcome the judicial efficiency of a class action as an opportunity to prove, in a single proceeding, that it has complied with all its contractual and legal obligations. In any event, it is safe to say that Exxon is impervious to any "pressure . . . to settle independent of the merits of the [Landowners'] claims." *In re Lorazepam & Clorazepate Antitrust Litig.*, 289 F.3d 98, 105 (D.C. Cir. 2002).

CONCLUSION

For the reasons stated in this Answer in Opposition, Exxon's Petition should be denied.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 5 and 32, the undersigned certifies that this Answer in Opposition is proportionally spaced in Century, has a typeface of 14 points, and does not exceed 20 pages.

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CERTIFICATE OF SERVICE

I, Marcus Neil Bozeman, hereby certify that on this Eighth day of September, 2014, I have filed via this Court's CM/ECF system a copy of the preceding Respondents' Answer in Opposition to Joint Petition to Appeal under Federal Rule of Civil Procedure 23(f). Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Eighth Circuit Local Rule 25A(a), this electronic filing constitutes service on the following attorneys for Petitioners:

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